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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 09/963,360 | 09/24/2001 | Gerald J. Ware | WAR1394.07A | 8250 |
| 8156 | 7590 | 09/14/2005 | EXAMINER | |
| JOHN P. O'BANION O'BANION & RITCHEY LLP 400 CAPITOL MALL SUITE 1550 SACRAMENTO, CA 95814 | | | BECKER, DREW E | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1761 | |

DATE MAILED: 09/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/963,360

Applicant(s)

WARE, GERALD J.

Examiner

Drew E. Becker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 28 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 31-33, 35-39, 59-61 and 69-80 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 31-33, 35-39, 59-61 and 69-80 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 24 September 2001 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9/24/01
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Allowable Subject Matter

1. The indicated allowability of claims 31-33, 35-61, and 69-80 is withdrawn in view of the newly discovered reference(s) to Oates et al, Lockwood, Stewart et al, and Geromini et al. Rejections based on the newly cited reference(s) follow.

Drawings

2. New corrected drawings in compliance with 37 CFR 1.121(d) are required in this application because Figure 7 includes a "?????????". The corrected drawings are required in reply to the Office action to avoid abandonment of the application. The requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.
4. Claim 72 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 72 recites the limitation "said third drying zone". There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 103

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6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 31-33, 38-39, 59-61, 69-70, 73-74, and 77-79 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oates et al [Pat. No. 3,214,844] in view of Lockwood [Pat. No. 4,334,366].

Oates et al teach a drying apparatus comprising a housing with three zones (Figure 1, #10, 22, 24, 26), support substrates on a conveyor (Figure 3, #58), first and second heat sources (Figure 2, #30), means for recycling heated gas (Figure 2), the gas being air which inherently includes nitrogen, and an end sprocket which flips the support substrates and separates the food from them (Figure 1, #60). Phrases such as "at a rate of between..." are merely preferred methods of using the claimed apparatus. Oates et al do not recite an ultrasound source. Lockwood teaches a drying apparatus comprising an ultrasound source (column 5, line 60 to column 6, line 18). It would have been obvious to one of ordinary skill in the art to incorporate the ultrasound source of Lockwood et al into the invention of Oates et al since both are directed to drying devices, since Oates et al already included hot gas burners to heat the air (Figure 2, #30), and since Lockwood teaches that combination of pulsating hot gas and sonic energy provided superior drying performance as compared to conventional hot gas burners (column 8, line 23; column 5, line 60 to column 6, line 18).

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8. Claims 31-33, 38-39, 59-61, 69-74, and 76-79 are rejected under 35

U.S.C. 103(a) as being unpatentable over Scott [Pat. No. 4,419,834] in view of Lockwood.

Scott teaches a drying apparatus comprising a housing with three compartments (Figure 1, #26, 28, 30), support substrates in the form of vanes (Figure 2a, #64), a conveyor (Figure 1, #32), first and second heat sources in the form of heat exchange coils or gas burners (Figure 2, #48; column 3, lines 30-56), means for recycling heated gas (Figure 2), the gas being air which inherently includes nitrogen, means for separating the food from the substrates (Figure 1, #72), and the second compartment having two zones which share recycled air (Figure 1, #28). Phrases such as “at a rate of between...” are merely preferred methods of using the claimed apparatus. Oates et al do not recite an ultrasound source. Lockwood teaches a drying apparatus comprising an ultrasound source (column 5, line 60 to column 6, line 18). It would have been obvious to one of ordinary skill in the art to incorporate the ultrasound source of Lockwood et al into the invention of Scott since both are directed to drying devices, since Scott already included hot gas burners to heat the air (Figure 2, #48), and since Lockwood teaches that combination of pulsating hot gas and sonic energy provided superior drying performance as compared to conventional hot gas burners (column 8, line 23; column 5, line 60 to column 6, line 18).

9. Claims 35-36 and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Scott, in view of Lockwood, as applied above, and further in view of Ware [Pat. No. 5,522,156].

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Scott and Lockwood teach the above mentioned components. Scott also teaches vanes (Figure 2a, #64). Oates et al and Lockwood do not recite a plurality of spheres. Ware teaches a drying device using a plurality of spheres (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the plurality of spheres of Ware into the invention of Scott, in view of Lockwood, since all are directed to drying devices, since Scott already included vanes capable of holding the spheres (Figure 2a, #64), and since Ware teaches that it is old to employ a plurality of spheres to form a drying bed which provides for even application of particulate food products to be dried over the drying bed, thereby facilitating faster drying of the products (column 1, lines 12-27).

10. Claims 35, 37, and 80 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oates et al, in view of Lockwood, as applied above, and further in view of Ware [Pat. No. 5,522,156].

Oates et al and Lockwood teach the above mentioned components. Oates et al also teach a container (Figure 3, #58). Oates et al and Lockwood do not recite a plurality of spheres. Ware teaches a drying device using a plurality of spheres (abstract). It would have been obvious to one of ordinary skill in the art to incorporate the plurality of spheres of Ware into the invention of Scott, in view of Lockwood, since all are directed to drying devices, since Scott already included a container capable of holding the spheres (Figure 3, #58), and since Ware teaches that it is old to employ a plurality of spheres to form a drying bed which provides for even application of particulate food products to be dried over the drying bed, thereby facilitating faster drying of the products (column 1, lines 12-27).

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11. Claim 75 is rejected under 35 U.S.C. 103(a) as being unpatentable over Oates et al, in view of Lockwood, as applied above, and further in view of Geromini et al [Pat. No. 5,911,488].

Oates et al and Lockwood teach the above mentioned components. Oates et al and Lockwood do not recite a vibrating perforated table. Geromini et al teach a drying device comprising a vibrating perforated table (column 2, line 62). It would have been obvious to one of ordinary skill in the art to incorporate the vibrating table of Geromini et al into the invention of Oates et al, in view of Lockwood, since all are directed to drying devices, since Oates et al likely would have required some means to ensure that the cereal was completely emptied from the containers (Figure 1, #58), and since the vibrating table of Geromini et al would have helped ensure even heating and easy removal of all the cereal grains of Oates et al by preventing them from becoming stuck, or stationary, within the containers (Figure 1, #58).

Response to Arguments


12. Applicant's arguments with respect to claims 31-33, 35-39, 59-61, and 69-80 are have been considered but are moot in view of the new ground(s) of rejection.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Drew E. Becker whose telephone number is 571-272-1396. The examiner can normally be reached on Mon.-Fri. 8am to 4:30pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


DREW BECKER
PRIMARY EXAMINER
